

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
Ronald L. Motley (1944-2013) Jodi Westbrook Flowers / Donald A. Migliori, <i>Co-Chairs</i> MOTLEY RICE LLC James P. Kreindler, <i>Co-Chair</i> KREINDLER & KREINDLER LLP	Elliot R. Feldman, <i>Co-Chair</i> Sean Carter, <i>Co-Chair</i> COZEN O'CONNOR
Andrew J. Maloney III, <i>Co-Liaison Counsel</i> KREINDLER & KREINDLER LLP Robert T. Haeefe, <i>Co-Liaison Counsel</i> MOTLEY RICE LLC	J. Scott Tarbutton, <i>Liaison Counsel</i> COZEN O'CONNOR

VIA ECF

March 7, 2018

The Honorable George B. Daniels
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

RE: *In Re: Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Daniels:

The Plaintiffs' Executive Committees (PECs), on behalf of the Consolidated Amended Complaint (CAC) plaintiffs, write in regards to the March 5, 2018 letter (ECF No. 3916) of the Kingdom of Saudi Arabia and Saudi High Commission for Bosnia & Herzegovina (collectively defendants).

The PECs submit this letter for the sole purpose of noting that the (incorrect and irrelevant) contention raised in point 2 of the defendants' letter – suggesting that the CAC plaintiffs allegations and evidence fail to allege elements of an act of international terrorism for purposes of primary liability under the ATA – is a theory the defendants did not raise in their opening briefs (or for that matter in their joint reply).¹ Accordingly, any argument to that effect has been waived for purposes of the defendants' motions to dismiss for lack of jurisdiction. *Lore v. City of Syracuse*, 670 F.3d 127, 149 (2d Cir. 2012) (“Issues not raised in a party's opening brief are considered abandoned.”) (internal quotations omitted); *Cruz v. Zucker*, 116 F. Supp. 3d 334, 349 n. 10 (S.D.N.Y. 2015) (arguments not raised in opening brief are waived); *see also Tolbert v. Queens Coll.*, 242 F.3d 58, 75 (2d Cir. 2001) “issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.” (citation omitted).

¹ In fact, the phrases “involve violence or endanger human life” and “appear to be intended to intimidate or coerce a civilian population or to influence or affect a government” do not appear a single time in any of the defendants' briefs.

The Honorable George B. Daniels
March 7, 2018
Page 2

Respectfully submitted,

COZEN O'CONNOR

MOTLEY RICE LLC

By: /s/ Sean P. Carter
SEAN P. CARTER
For the Plaintiffs Exec. Committees

By: /s/ Robert T. Haeffele
ROBERT T. HAEFELE
For the Plaintiffs Exec. Committees

ANDERSON KILL P.C.

By: /s/ Jerry S. Goldman
JERRY S. GOLDMAN
For the Plaintiffs' Exec. Committees

cc: All Counsel of Record via ECF
The Honorable Sarah Netburn (Via ECF & Federal Express)